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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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James Prentiss Coghill,

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Petitioner,

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v.

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Charles L. Ryan, et al.,

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Respondents,

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CV 13-268 TUC DCB

ORDER

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This matter was referred to Magistrate Judge Jacqueline M. Rateau, pursuant to Rules of Practice for the United States District Court, District of Arizona (Local Rules), Rule (Civil) 72.1(a). She issued a Report and Recommendation (R&R) on August 19, 2015. (R&R (Doc. 18)). She recommends that the Petition be dismissed because his claims were procedurally defaulted in the state courts and federal review is, accordingly, precluded.

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STANDARD OF REVIEW

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The duties of the district court, when reviewing a R&R of a Magistrate Judge, are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Fed.R.Civ.P. 72(b), 28 U.S.C. § 636(b)(1). When the parties object to a R&R, “[a] judge of the [district] court shall make a *de novo* determination of those portions of the [R&R] to which objection is made.” *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C. § 636(b)(1)). When no objections are filed, the district court does not need to review the R&R *de novo*. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir.2003) (*en banc*). To the extent that no objection has been made, arguments to the contrary have been waived. *McCall v. Andrus*, 628

1 F.2d 1185, 1187 (9th Cir. 1980) (failure to object to Magistrate's report waives right to do so on
 2 appeal); *see also*, Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United*
 3 *States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974) (when no timely objection is filed, the court
 4 need only satisfy itself that there is no clear error on the face of the record in order to accept the
 5 recommendation).

6 The parties were sent copies of the R&R and instructed they had 14 days to file written
 7 objections. 28 U.S.C. § 636(b), *see also*, Federal Rule of Criminal Procedure 72 (party objecting
 8 to the recommended disposition has fourteen (14) days to file specific, written objections). To
 9 date, no objections have been filed.

10 REPORT AND RECOMMENDATION

11 The Honorable Jacqueline M. Rateau did an exceptional job of explaining the doctrines
 12 of exhaustion and procedural default. This Court can add nothing to her explanation of the law
 13 and her application of the law to the facts of this Petition. As she noted, Petitioner's claims were
 14 raised in the state courts, pursuant to his Post Conviction Relief petition, and have been found
 15 by the state court to be procedurally defaulted. Therefore, Petitioner's claims are precluded from
 16 federal review because they have been denied under independent and adequate state procedural
 17 grounds.

18 While there are no objections and review has, therefore, been waived, the Court
 19 nevertheless reviews at a minimum, *de novo*, the Magistrate Judge's conclusions of law.
 20 *Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (citing *Turner v. Duncan*, 158 F.3d 449,
 21 455 (9th Cir. 1998) (conclusions of law by a magistrate judge reviewed *de novo*); *Martinez v.*
 22 *Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991) (failure to object standing alone will not ordinarily
 23 waive question of law, but is a factor in considering the propriety of finding waiver)). The Court
 24 finds the R&R to be thorough and well-reasoned, without any clear error in law or fact. *See*
 25 *United States v. Remsing*, 874 F.2d 614, 617-618 (9th Cir. 1989) (*United States v. Remsing*, 874
 26 F.2d 614, 617-618 (9th Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(A) as providing for district court
 27 to reconsider matters delegated to magistrate judge when there is clear error or recommendation
 28 is contrary to law). The Court accepts and adopts the R&R as the opinion of the Court, pursuant

1 to 28 U.S.C. § 636(b)(1). For the reasons stated in the R&R, the Court denies the Amended
2 Petition.

3 **Accordingly,**

4 **IT IS ORDERED** that the Report and Recommendation (Doc. 18) is adopted as the
5 opinion of the Court.

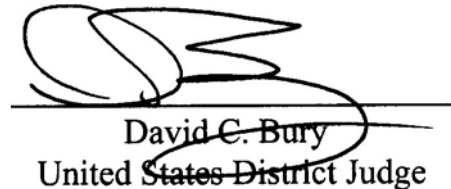
6 **IT IS FURTHER ORDERED** that the Amended Petition (Doc. 6) is DENIED.

7 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment
8 accordingly.

9 **IT IS FURTHER ORDERED** that in the event Petitioner files an appeal, the Court
10 declines to issue a certificate of appealability, pursuant to Rule 11(a) of the Rules Governing
11 Section 2254 cases because reasonable jurists would not find the Court's procedural ruling
12 debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

13 DATED this 7th day of October, 2015.

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David C. Bury
United States District Judge